

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
BLOOMBERG, L.P.,
CONTINENTAL AIRLINES, INC.,
UNITED PARCEL SERVICE, INC.,

Defendants.

CASE NO. 6:08-CV-447-LED

JURY TRIAL DEMANDED

**PLAINTIFF AND COUNTERDEFENDANT EMG TECHNOLOGY LLC'S
ANSWER TO COUNTERCLAIM OF APPLE, INC.**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaim of Apple, Inc. ("Apple") as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaim. EMG expressly denies that Apple is entitled to any relief whatsoever in connection with its Counterclaim, including, but not limited to, all relief requested in Apple's Prayer for Relief.

JURISDICTION AND VENUE

- 30. EMG admits the allegations contained in Paragraph 30.
- 31. EMG admits the allegations contained in Paragraph 31.
- 32. EMG admits the allegations contained in Paragraph 32.
- 33. EMG admits the allegations contained in Paragraph 33.

FACTS CONCERNING THE '196 PATENT

34. EMG admits that it is the owner by assignment of United States Patent No. 7,441,196 (the “'196 Patent”), which, on its face, is entitled “Apparatus and Method of Manipulating a Region on a Wireless Device Screen for Viewing, Zooming and Scrolling Internet Content” filed on March 13, 2006, and issued on October 21, 2008. EMG admits that Elliot A. Gottfurcht, Grant E. Gottfurcht, and Albert-Michel C. Long are the inventors of the '196 Patent and that a copy of the '196 Patent was attached as Exhibit A to EMG’s Third Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 34.

FACTS CONCERNING THE '845 PATENT

35. EMG admits that it is the owner by assignment of United States Patent No. 7,020,845 (the “'845 Patent”), which, on its face, is entitled “Navigating Internet Content on a Television Using a Simplified Interface and a Remote Control.” filed on March 3, 2000, and issued on March 28, 2006. EMG admits that Elliot A. Gottfurcht, Grant E. Gottfurcht, and Albert-Michel C. Long are the inventors of the '845 Patent and that a copy of the '845 Patent was attached as Exhibit B to EMG’s Third Amended Complaint. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 35.

COUNT ONE - UNITED STATES PATENT NO. 7,441,196

DECLARATION OF NONINFRINGEMENT

36. EMG incorporates by reference its responses to Paragraphs 30-35 above as though fully set forth herein.

37. EMG admits that an actual controversy currently exists between EMG and Apple with respect to infringement of the '196 patent and that EMG brought this action against Apple and others alleging that Apple infringes the '196 Patent and Apple denies that allegation. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 37.

38. EMG denies the allegations contained in Paragraph 38.

39. EMG denies the allegations contained in Paragraph 39.

COUNT TWO - UNITED STATES PATENT NO. 7,020,845

DECLARATION OF NONINFRINGEMENT

40. EMG incorporates by reference its responses to Paragraphs 30-39 above as though fully set forth herein.

41. EMG admits that an actual controversy currently exists between EMG and Apple with respect to infringement of the '845 patent and that EMG brought this action against Apple and others alleging that Apple infringes the '845 Patent and Apple denies that allegation. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 41.

42. EMG denies the allegations contained in Paragraph 42.

43. EMG denies the allegations contained in Paragraph 43.

COUNT THREE - UNITED STATES PATENT NO. 7,441,196

DECLARATION OF INVALIDITY

44. EMG incorporates by reference its responses to Paragraphs 30-43 above as though fully set forth herein.

45. EMG admits that an actual controversy currently exists between EMG and Apple regarding the validity of the '196 patent and that EMG brought this action against Apple and others alleging that Apple infringes the '196 Patent and that Apple denies that allegation. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 45.

46. EMG denies the allegations contained in Paragraph 46.

47. EMG denies the allegations contained in Paragraph 47.

COUNT FOUR - UNITED STATES PATENT NO. 7,020,845

DECLARATION OF INVALIDITY

48. EMG incorporates by reference its responses to Paragraphs 30-47 above as though fully set forth herein.

49. EMG admits that an actual controversy currently exists between EMG and Apple regarding the validity of the '845 patent and that EMG brought this action against Apple and others alleging that Apple infringes the '845 Patent and that Apple denies that allegation. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 49.

50. EMG denies the allegations contained in Paragraph 50.

51. EMG denies the allegations contained in Paragraph 51.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against Apple as follows:

(a) Dismissing Apple's Counterclaim with prejudice and ordering that Apple is entitled to no recovery on the Counterclaim;

(b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and

(c) Awarding EMG such other and further relief as this Court deems just and appropriate.

Dated: July 23, 2009

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 23th day of July, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth

CHARLES AINSWORTH